The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

January 12, 2005

D.T.E. 03-AD-01

Adjudicatory hearing in the matter of the complaint of John Lee protesting rates and charges for services provided by Boston Edison Company.

APPEARANCES: Neil Osborne, Esq.
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FOR: JOHN LEE
Complainant

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FOR: BOSTON EDISON COMPANY
d/b/a NSTAR ELECTRIC
Respondent

I. INTRODUCTION

On July 30, 2002, an informal hearing was held before the Consumer Division ("Division") of the Department of Telecommunications and Energy ("Department") on the complaint of Mr. John Lee ("Complainant") relative to rates and charges for electric service provided by Boston Edison Company d/b/a NSTAR Electric ("Company"). Following the Division's informal hearing decision dated January 7, 2003, Mr. Lee, on January 19, 2003, requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.T.E. 03-AD-01.

Pursuant to notice duly issued, an adjudicatory hearing was held on Ocotber1, 2003 at the Department's offices in Boston, in conformance with the Department's Regulations on Billing and Termination Procedures, 220 C.M.R. §§ 25.00 et. seq.[1] The Complainant testified on his own behalf. The Company sponsored the testimony of Mary Ellen Molloy, customer service representative. The evidentiary record consists of twelve exhibits and the Complainant's response to one record request.

II. SUMMARY OF ISSUES

The Complainant disputes the bills rendered to four accounts by the Company for electrical use at 271 Humboldt Avenue, Dorchester, Massachusetts (hereinafter "Property") from September 7, 2000 to the present (Tr. at 29, 43). As set forth in more detail below, the Property is comprised of three units, and common areas, each serviced by a separate meter, all

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[1] This matter was originally scheduled for evidentiary hearings on April 1, 2003 but was postponed twice due to scheduling conflicts of the parties.

billed to the Complainant during the Property's ongoing renovation. The Complainant maintains that his bills for all four meters are consistently high and do not reflect the actual electrical consumption at the Property (id. at 28, 30). The Complainant contends that the meters installed by the Company on September 7, 2000, were improperly grounded and incorrectly marked for identification by the Company (id. at 28, 51, 59-60).

The Company argues that the Complainant is responsible for the payment of all bills for the four meters at the Property rendered between September 7, 2000 through September 19, 2003,[2] because the bills were based on actual reads, and the meter tests performed by the Company and the Commonwealth of Massachusetts on the customer's meters showed that the meters were working properly (Exhs. BECo-1; BECo-2; BECo-3; BECo-4; Tr. at 69-73, 78, 82). Moreover, the Company maintains that the wiring and labeling of the meters were the sole responsibility of the Complainant (Tr. at 99). Therefore, the Company contends that the Complainant is responsible for payment of the balance due of $13,546.97 for bills rendered through September 19, 2003 (id. at 82).

III. SUMMARY OF FACTS

A. The Complainant

The Complainant testified that in 1994, he purchased the Property, a 2700 square-feet, three-floor house (Exh. DTE-6, at 2; Tr. at 13-14). Since its purchase, the Complainant has been renovating the Property, including dividing the house into three separate residential units,

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[2] September 19, 2003 is the most recent bill date for all four meters (Tr. at 82).

one on each floor (Exh. DTE-6, at 3; Tr. at 48-49). Due to the high costs of the planned renovations, the Complainant has temporarily ceased work on the Property (Exh. DTE-6, at 3). Each unit has a meter, and the common area has a separate meter, all of which are billed to the Complainant (Tr. at 50, 51). The Complainant stated that the first and second floor units are unoccupied and that he resides on the third floor (Tr. at 41). The Complainant testified that each unit of the Property is equipped with electric heat and that the Property has one 30- or 40-gallon electric hot water heater that services the third floor unit only (Exhs. DTE-6, at 3; Exh. DTE-7, at 2). The Complainant stated that other electrical appliances used at the Property included lights, a washer and dryer, a refrigerator, a computer, a television, a stereo, a stove and two window unit air conditioners (Tr. at 23, 31).

The Complainant testified that his meters were replaced by the Company on September 7, 2000 after resolving a previous billing dispute with the Company (id. at 19). According to the Complainant, each bill rendered by the Company since the installation of the new meters was high, sometimes for as much as six, seven, or eight hundred dollars, and did not reflect his actual use of electricity (id. at 16-17, 29, 30, 42, 46, and 59). The Complainant further testified that he is rarely home, making it highly unlikely that he used the amount of electricity that he was billed for by the Company (id. at 21, 23, 28, 29, 41, and 42). The first and second floor units are not used by the Complainant and are only heated in the winter to avoid damage through freezing to the Property's water system (id. at 30, 37-39).

The Complainant also testified that an unnamed friend, who is an electrician, inspected the meters in the Spring of 2001 and concluded that the meters were not properly grounded

(Exh. DTE-6, at 4; Tr. at 58, 65). According to the Complainant, the electrician opined that faulty grounding was leading to inaccurate meter readings, but provided nothing in writing to substantiate his assertions (Exh. DTE-6, at 4; Tr. at 58).

The Complainant stated that he is doing most of the work on the Property by himself. The work involves the sporadic use of light power tools including, electric saws, sanders, drills and other miscellaneous hand-held power tools (Exh. DTE-6 at 4; Tr. at 62-63). The Complainant testified that he has on occasion used space heaters during renovation work on the first floor (Tr. at 37-39).

The Complainant testified that he made partial payment to the Company based upon what he believed was reasonable (id. at 59). Aside from his judgment as to a reasonable amount, the Complainant offered no further explanation as to the calculation of the amounts withheld (id. at 59-61).

B. The Company

The Company testified that it rendered bills for the Complainant's electric account monthly from September 7, 2000 through September 19, 2003 and that virtually all of the bills were based on actual or verified reads (Exhs. BECo-1; BECo-2; BECo-3; BECo-4; Tr. at 68-69, 71-72, 77-78, and 80). The Company stated that the estimated reads were the result of the conversion and upgrade of the Company's billing system and the estimated bills were subsequently adjusted to reflect actual use (Tr. at 105-106). The Company further testified that, as of the day of the hearing, the outstanding balance on the Complainant's account was $13,546.97 (Tr. at 82, 110).

According to the Company, the meters installed at the Property were new and calibrated by the manufacturer prior to shipment (Exh. BECo-1; Tr. at 80-82, 99). The Company relies on the manufacturer's certification that the meters are calibrated within acceptable tolerances for accuracy (Exh. DTE-3; Tr. at 80-82). Furthermore, the Company asserts that there is no factual evidence to indicate that the meters were improperly grounded or otherwise malfunctioning (id. at 99-100).

The Company testified that it conducted meter tests on all meters on the Property on January 30, 2001 as a result of the customer billing dispute and again under the Department's supervision on July 31, 2002 in connection with the informal proceedings (Exhs. BECo-1, BECo-2, BECo-3, BECo-4; Tr. at 69, 70, 72, 73, 75, 78, 80). While the January 30, 2001 meter test results themselves are not available, the Company produced the testing technician's notes indicating that the meters tested "OK" (Exh. BECo-1; Tr. at 70, 72, 73, 78). The Company stated that a second meter test was conducted on July 31, 2002 at the request of the Department, and confirmed that the meters tested accurate at both light and full loads.[3]

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[3] The Company provided the following results of the testing conducted on July 31, 2002:

METER No.	Light Load Found ("LLF")	Full Load Found ("FLF")
1386041 - 3rd floor	100.5%	99.8%
1386042 - 2nd floor	99.4% LLF	99.8% FLF
1386241 - common area	99.8% LLF	99.8% FLF
1386243 - 1st floor	99.4% LLF	99.8% FLL

(Exh. DTE-3).

During the course of the July 31, 2002 meter test, each meter was removed and each floor was then inspected to determine if the meter troughs were labeled correctly before the meters were reinstalled (Tr. at 99-100). As a result of this process, the Company determined that meter no. 1386041, labeled and being billed for the 2nd floor of the Property, was actually registering use for the 3rd floor and meter no. 1386042, labeled and being billed for the 3rd floor of the Property was actually registering use for the 2nd floor (id. at 78-79). According to the Company, Company technicians do not label meters, install the meter troughs or electrical boards, and thus are not responsible for the manner in which buildings are wired (id. at 99). The Company asserts that it took actual readings from the meters located at the Property, the meters were accurate and it should not be held responsible for mis-wiring or labeling by the Complainant or his contractors (id. at 110-111).

IV. STANDARD OF REVIEW

The Department has held consistently that, where a meter has been tested and found accurate, past actual readings are correct absent clear and convincing evidence to the contrary. Nelder v. Boston Edison Company, D.P.U. 91-AD-38 (1994); Chapman v. Eastern Edison Company, D.P.U. 262 (1987). In addition, the Department repeatedly has found that a mere discrepancy in use is insufficient to rebut the accuracy of a meter test. Nelder; Barach v. Boston Edison Company, D.P.U. 91-AD-6 (1992); Brabazon v. Boston Gas Company, D.P.U. 85-AD-32 (1987). Moreover, actual readings from a meter tested and found to be accurate outweigh a customer's impression of use. Crossley v. Boston Gas Company, D.P.U. 576 (1983). The customer must meet a strict standard when faced with a meter tested and found

accurate. The standard rests upon two basic premises: (1) scientific evidence supports the certainty and reliability of tested meters; and (2) billing for the utility consumption could not feasibly be based upon a customer's impression of his or her consumption. Mellen v. Boston Gas Company, D.P.U. 91-AD-8 (1994); Donovan v. Hingham Water Company, D.P.U. 758-B (1986).

V. ANALYSIS AND FINDINGS

The Department must decide whether the Company's billings to the Complainant accurately reflect his electricity consumption from September 7, 2000 to September 19, 2003, and whether the Complainant is responsible for the resulting bills totaling $13,546.97.

The Company and the Department both tested the Complainant's meters.[4] The meters tested within the allowable range and accuracy level of not more than two percent as set forth by G.L. c. 164, § 103 (Exh. DTE-3). In addition, the Company testified that the manufacturer tested the meters prior to installation and found them to be within the standard deviation (Tr. at 81-82). The Department finds that tests of the Complainant's meter by the manufacturer, the Company, and the Department indicate that the meters were operating properly and were recording electricity consumption accurately.

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[4] Companies test a meter by: (1) terminating service within the dwelling unit to discover if additional use is being registered by the meter; and (2) removing the meter from the trough to determine if use from the dwelling unit is not being measured by the appropriate meter. See e.g., Maw v. Massachusetts Electric Company, D.P.U. 90-AD-1, at 6, n.3 (1993); Canniff v. Hull Municipal Lighting Plant, D.T.E. 01-AD-2, at 5, n.1 (2002).

In order to overcome the results of the meter tests, the Complainant must show by clear and convincing evidence that the meter tests were inaccurate, and the basis for the billing complaint is more than the customer's impression of consumption. See D.P.U. 91-AD-8 (1994); D.P.U. 758-B (1986). The Department has previously found that a customer must meet a strict standard when faced with a meter tested and found accurate. The standard rests upon two basic premises: (1) scientific evidence supports the certainty and reliability of tested meters; and (2) billing for utility consumption could not feasibly be based upon a customer's impression of his or her consumption. D.P.U. 91-AD-8 (1994); D.P.U. 758-B (1986); Pisacane v. Commonwealth Electric Company, D.P.U. 1437 (1984).

Since the Complainant's meters tested within statutory parameters, the Complainant has to demonstrate that despite the test results, the meters are registering inaccurate information. The Complainant did not offer clear and convincing evidence to support his impression that his electricity consumption was less than that registered by his meters. To the contrary, while Complainant's assertions that the Property is largely unoccupied may be true, his testimony that the Property is not under any renovations that would cause higher than expected electric bills is contradicted by the Company's photographs of the premises showing that the Property is or has been under a significant amount of renovation (Exh. BECo-5). Furthermore, the Complainant's proffered hearsay evidence from his electrician cannot overcome the meter tests conducted by both the Company and Department's own inspectors.[5] Therefore, the

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[5] The Department will not rely on the Complainant's hearsay statements made regarding his electrician. See Douglass v. Massachusetts Electric Company, D.T.E. 03-AD-3, (continued…)

Department finds that the Complainant has not proven why the Department should not rely on the two meter tests performed on his meters. Because the meter tests indicate that the meters were accurately measuring electricity consumption, the Complainant is responsible for the outstanding bills. See James v. NSTAR Electric, D.T.E. 02-AD-02 (2003).

Although the facts in this case suggest the possibility of "cross-metering," the Department need not reach this issue to the extent that evidence has not been presented that such cross-metering impaired, in anyway, the accuracy or function of the meters at the Property and in light of the fact that the complainant is responsible for payment of bills for all meters located at the Property (Tr. at 44). See Harrison v. Boston Edison Company, D.P.U. 91-AD-15 (1991) (issue of crossed meters not relevant to the amount of electricity registered on customer's meters where customer was responsible for payment of all electrical use at property). Cf. Foley v. Commonwealth Electric Company, D.P.U. 1523 (1985) (abatement

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[5](…continued)

at 7 n.4 (2004). There is no corroboration of the conversation. Hearsay evidence of this kind is not, per se, inadmissible in an administrative proceeding, where judgment must ultimately rest on substantial evidence. G.L. c. 30A, § 11(2); School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). To constitute substantial evidence, the hearsay statement must bear sufficient "indicia of reliability and probative value." Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 530 (1988). We do not rely on the admitted evidence because those indicia are absent from this record. Put differently, there is also no "residuum of legal evidence to support the claim" that the hearsay statement is adduced to support. Id. at 533 (Lynch, J., dissenting), citing Carroll v. Knickerbocker Ice Company, 218 N.Y. 435, 440 (1916). The Complainant's unsupported recounting of his electrician's assertion that the meters were not properly grounded fails to develop his point sufficiently or credibly.

ordered where company was responsible for confusion over crossed meters that prevented the complainant from getting accurate bills and making consumption adjustments accordingly).

In summary, the Department finds that the Complainant's meters, which were twice independently tested, first by the Company and then the Department, in accordance with state procedures, were accurate. In addition, the Department determines that neither the Complainant's arguments nor evidence submitted meets the burden of showing that the meters were defective. Therefore, the Department concludes that the Company's bills from September 7, 2000, through September 19, 2003, are accurate. Accordingly, the Department orders that the balance of $13,546.97 on the Complainant's account is due and payable to the Company. Alternatively, the Company and the Complainant may agree to a payment plan in which the Complainant makes payment on the outstanding balance in addition to his current bills until the debt is satisfied.

VI. ORDER

After due notice, hearing, and consideration, it is

ORDERED: that the Complainant owes the Company $13,546.97 due immediately or payable in monthly installments as may be agreed upon by the parties.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.